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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, ET AL.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Counsel for Petitioners.

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ROBERT C. HUNT,
J. A. LIPSCOMB,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit entered on the 4th day of December, 1941, affirming a judgment of conviction of the petitioners from the District Court of the United States for the Eastern District of Tennessee on a charge of conspiracy in violation of 18 U. S. C. A., Section 88, the conspiracy alleged being to vio-

late 18 U. S. C. A., Section 82, as amended; and penitentiary sentences inflicted on all petitioners.

Opinion Below.

The opinion of the court below filed December 4, 1941, has not yet been reported, but is incorporated in the record at page 868; the judgment and sentences in the District Court were entered on February 3, 1941 (R. 31-40).

Jurisdiction.

Jurisdiction was acquired by virtue of an indictment returned by the United States Grand Jury for the Eastern District of Tennessee on November 14, 1940 (R. 2-22), charging petitioners and thirteen other persons with conspiracy in violation of 18 U. S. C. A., Section 88, the conspiracy being to violate 18 U. S. C. A., Section 82, as amended, the specific charge being that the petitioners and thirteen other persons conspired and confederated together to destroy property belonging to the Tennessee Valley Authority, a corporation in which the United States of America was a stockholder, and did commit many overt acts pursuant to said conspiracy. Application for stay of mandate has been made to the Circuit Court of Appeals but has not yet been acted upon.

The jurisdiction of this Court is based upon Judicial Code, Sec. 240, as amended; U. S. C. A., Title 28, Sec. 347, and on alleged violation of the Fifth Amendment to the Constitution of the United States.

Questions Involved.

First. Four questions are involved. Whether confessions obtained during a strike by the sheriff of a county, company guards or special deputy sheriffs and agents of the Federal Bureau of Investigation are competent when in the in-

stance of Felton Moore Woodward, John Edward Simonds, and Earl Hubbard they had been in custody in a building owned by their former employer and whom they were striking against, for six days and had been quartered in three different places, but constantly surrounded by deputy sheriffs and agents of the Federal Bureau of Investigation and held without any legal process; in the instance of John David Queen, Robert Lee Rhodes and Robert Lee Ballew, they had been held in the same manner for more than twenty-four hours, and all of them not being permitted at any time to see relatives, friends, counselors or advisers, and all were questioned continually by Federal agents and the sheriff.

Second. In the instance of John David Queen, Robert Lee Ballew, Robert Lee Rhodes, can they be convicted on their uncorroborated confessions alone.

Third. The trial court refused to permit petitioners to show by various witnesses that during the course of the strike the Tennessee Copper Company, their former employer, had paid all the special deputy sheriffs their salaries through the sheriff of the county; that during a course of many months they had not been permitted to be at large on the highways or streets at night; that they had been coerced and intimidated over a long period of time; their homes and cars searched regularly without process of law; the trial court charging the jury charged the jury that the above was the theory of the petitioners, but had previously declined to allow proof to support this theory. The Circuit Court of Appeals held the evidence was immaterial.

Fourth. As to petitioners Marion Luther Ellis and Mitchell Clifton Anderson, whether there is any evidence of the *corpus delicti* and any evidence to support the verdict of the jury and the judgment of the District Court, and the judgment of the Circuit Court of Appeals.

Summary Statement of Facts.

First. On July 14, 1939, the International Union of Mine, Mill and Smelter Workers called a strike against the Tennessee Copper Company, a copper smelting concern located in Polk County, Tennessee, in the Eastern District of Tennessee. The strike continued from that date until after the offenses charged in the indictment in the present case. Shortly thereafter the Company decided to reopen the plant, and in order to reopen the Sheriff of Polk County, Tennessee, employed a large number of special deputy sheriffs, some of which were from Polk County, and some from other places, to protect and take care of the Copper Company's interests (R. 550-1). The Copper Company owned a building in Copperhill, Tennessee, Polk County, known as the Y. M. C. A. Building. This building was turned over to the Sheriff of Polk County by an official of the Copper Company on August 23, 1941 (R. 552-733), as a place to arrange barracks for the special deputy sheriffs. A large number of special deputy sheriffs were quartered in said building in Army style until after the petitioners in this case were arrested from April 24th until April 29th, 1940 (R. 553), and at the time of said arrests and during the time petitioners were confined in said building between 15 and 25 deputies were quartered there.

On the night of March 31, 1940, two power lines belonging to the Tennessee Valley Authority, a corporation, in which the United States of America is a stockholder were dynamited and the power partially shut off (R. 125). On the night of April 14th, 1940, two more power towers were blown down (R. 125). On April 16th, 1940, agents Mann and Roche, of the Federal Bureau of Investigation arrived in Polk County, Tennessee, and started an investigation of the explosions, in connection with the Sheriff of that County (R. 168-332-3). Thereafter the two said agents worked with

the Sheriff of the County, he attended their meetings, went out on investigations with them, until after the arrests in this case (R. 334-5). Sometime shortly after midnight on the night of April 22, 1940, the Sheriff of Polk County went to the hotel where the agents of the Federal Bureau of Investigation were staying and took with him one Freed Long, and there advised the Federal Agents the lines would be blown again at 1:20 the next night (R. 466-7); the lines were blown shortly after midnight on the night of the 23rd of April, 1941.

Thereupon the Sheriff discussed with the Federal Agents the question of who he and they thought guilty of the offense (R. 556), and decided that there were about eighty or ninety men out on strike who had knowledge of how to use explosives, and thereupon acting in concert with said agents proceeded to arrest all said men without warrants, (R. 192) and without taking them before a magistrate or United States Commissioner, and incarcerating them mostly in the Copper Company's Y. M. C. A. Building, and in what was known as the City Jail in Copperhill, and some in the County Building. Some of the men were kidnapped in the State of North Carolina; some in the State of Georgia, and brought back to this private building without extradition or removal order.

On April 24th, 1940, and April 25, 1940, six additional agents of the Federal Bureau of Investigation arrived in Copperhill, Polk County, to assist in the investigation. The agents and the sheriff then proceeded to question the various men in custody, doing this continually, different agents examining the same man at various times during the day. All of the questioning was done in the Copper Company's Y. M. C. A. Building; at all times large numbers of these special deputy sheriffs were circulating around through the buildings, laughing, talking and always bearing arms (R. 307-553-4).

At times petitioners and others would be transferred to the City Jail or County Building in Copperhill; some of them spent the nights in the bunks occupied by the special deputies while they were on duty, (R. 554-5) and other special deputies were sleeping in the same room. On occasions from three to seven men were placed in the City Jail in a cell seven by seven feet and there forced to spend the night, with only two bunks in said cell, the others having to sleep on the concrete floor.

The agents of the Federal Bureau of Investigation had received confidential information of who was guilty and what the truth was and when one of the petitioners or others would say anything contrary to their confidential information they were told they were lying and the agents didn't want to hear that. When statements were finally obtained they substantially conformed to what the agents knew the truth was beforehand, from their confidential information. Confessions were not taken until they conformed to the Agents confidential information. The agents knew whether petitioners were telling the truth because they had this confidential information about what the truth was (R. 354-5-339-40-357-398-9).

The agents of the Federal Bureau of Investigation did not care whether the petitioners had anything to eat or not (R. 174).

The agent in charge, Plaxico, told the chief Deputy Sheriff of Polk County, who was assisting in the investigation, that any of petitioners who would come clean and tell the truth he would recommend to the District Judge they be placed on probation and Campbell told the petitioners what Plaxico had said (R. 172-3). After the arrest and commitment Agent Mann did recommend to the United States Commissioner that the bond of some of the petitioners who has signed confessions be set lower than other defendants, and later asked that petitioner Woodward's bond be reduced (R. 217-8).

No person was permitted to see petitioners while they were in custody; and if anybody did get in to see any of them it was a mistake on somebodys part (R. 555). After they were removed from Copperhill to the jail at Chattanooga and formal complaints sworn out orders were given that they were not to see their families or counsel, and they were not permitted to see members of their family for several days, that is on or about May 6, 1940 (R. 266-645-770-773).

Finally after six days petitioners Felton Moore Woodward, John Edward Simonds, and Earl Hubbard, made statements to the Federal Agents. They had been questioned in relays by Federal Agents for six days. It took Felton Moore Woodward seven or eight hours to tell the Agents his connection, when according to them he was trying to tell them all the time; sometimes he would hesitate as much as five minutes before he could answer a question, he appeared groggy, and when he couldn't remember dates or details of what happened, these details were supplied from the confidential information the agents had and placed in his statement (R. 339-341-2).

The petitioners John David Queen, Robert Lee Ballew and Robert Lee Rhodes, were not held as long as the petitioners Woodward, Simonds, and Hubbard. However, they were subjected to the same sort of treatment while in custody; Ballew was kidnapped in North Carolina and forcibly removed to the Copper Company's Y. M. C. A.; Queen had a small baby at home ill with pneumonia and was told if he would sign the statement he could go home and see his baby. The statements finally obtained in general conformed to the agents confidential information (R. 339-40).

Each of the petitioners denied the contents of his confession and testified that they had practically no food; they were constantly surrounded by Federal Agents and armed special deputy sheriffs; that they were promised reward for making statements; and that drinks they re-

ceived were doped; a doctor was called for Hubbard after an all day session; and that finally in sheer desperation they signed anything they were told to sign; they had been on strike for a long period of time and the special deputy *sheriffs or company guards* were their bitter enemies.

Each and every petitioner, together with the persons acquitted, testified in their own behalf, and each proved that his character and reputation for truth and veracity was good.

Petitioners aver that the conduct above set out violated their rights under the 5th Amendment to the Constitution of the United States.

Second. There is no evidence against the petitioners John David Queen, Robert Lee Rhodes, and Robert Lee Ballew except their alleged confessions, which are not corroborated by any other evidence. The Court of Appeals so held but said there was some evidence that the crime of conspiracy had been committed, and that this constituted the *corpus delicti* as to these petitioners even though they were not connected in any way except through their confessions. The alleged confessions of said petitioners show that they participated in the commission of certain substantive offenses in Fannin County, Georgia, where one of the lines dynamited was located, and shows no participation elsewhere. There is no evidence circumstantial or direct connecting said petitioners with the offense charged except their naked confessions.

Third. The petitioners offered to prove by various Government witnesses that the special deputy sheriffs employed to guard the Copper Company's property were in fact paid their salaries by the Copper Company; that they had over a period of months searched all strikers' cars out after dark, and strikers' homes, and had in general mistreated the

strikers and abused them and their families and created a general reign of terror in Polk County. The trial court excluded this evidence, but in charging the jury charged that it was the theory of petitioners and the other defendants that it was the theory of petitioners that this was the reason they were in terror of the deputy sheriffs, and one of the reasons they claimed they had while surrounded by such deputy sheriffs and Federal Agents they had signed the so-called confessions. The case was thus submitted to the jury on a correct charge of petitioners theory but without evidence to support said theory, same having been excluded by the court. The Circuit Court of Appeals held this evidence immaterial (R. 560-553-608-157-8-154-568-551).

Fourth: There was no evidence to submit the case to the jury as to petitioners Marion Luther Ellis and Mitchell Clifton Anderson. The *corpus delicti* was not shown except by one witness who was impeached and shown to be a person of such character that his oath did not amount to evidence in any degree. In any event since petitioner Anderson was the International Representative of the Union and he was charged by the Government with being the chief conspirator, his defense was prejudiced by the introduction of the alleged confessions; and Ellis was also active as a Union officer during the strike.

Reasons for Granting the Petition.

First, The decision of the Sixth Circuit Court of Appeals in reference to the confessions is in conflict with the decision of this Court in the case of *Chambers* v. *State of Florida*, 309 U. S. 227 and *Bram* v. *United States*, 168 U. S. 532, and *Purpura* v. *United States*, 262 Federal 473, 4th Circuit. The conduct of the Federal Officers and the Sheriff and special deputies in this case is probably considerably worse

than that of the officers in *Chambers* v. *State of Florida*, and certainly much worse than that in *Bram* v. *United States*, and *Purpura* v. *United States*. There should be some limit placed on Federal officers as to the time and place they may question and examine a person not charged with any offense. If they can hold a person six days under the circumstances here shown they can hold him seven, eight, or nine or ten days or longer. The fact that the question of the voluntary nature of the confessions was submitted to the jury is immaterial as was held in the *Chambers* case. The confessions were obtained in violation of petitioners' rights under the Fifth Amendment to the Constitution of the United States.

Two. There is a conflict in the decision of the Circuit Court of Appeals in reference to conviction on an uncorroborated confession and the decision of this Court in the case of *Warzower* v. *United States*, 312 U. S. 342, 61 Sup. Court 603, and *Langer* v. *United States*, 76 F. (2d) 827 (8th Circuit) and *Oldstein* v. *United States*, 99 F. (2d) 305 (10th Cir.) and should be decided whether in a conspiracy case a confession uncorroborated by any evidence circumstantial or otherwise that a party participated in a substantive offense is sufficient to establish the *corpus delicti* of conspiracy as to him, when there may be some evidence that other parties at some time or place may have entered into a conspiracy.

Third. This is a new question of law. It involves the proposition that the trial court excludes substantial pertinent evidence from the consideration of the jury and then in charging the jury charges that said evidence constituted the theory of the petitioners, when all evidence bearing on that theory had been excluded from the consideration of the jury. This is a new and substantial question of Federal Law and should be decided by this Court.

Fourth. The only evidence of the *corpus delicti* or otherwise as to petitioner Anderson was by an impeached witness, impeached to the extent that his testimony had no probative value and did not amount to proof. The court should determine whether a conviction can be obtained based on such evidence. The court should pass on the entire evidence to determine whether there is any evidence to sustain a conviction against petitioners Mitchell Clifton Anderson and Marion Luther Ellis.

In the decision below in the instant case the Circuit Court of Appeals decided the above important questions of law contrary to the decisions of this Court and of other Circuit Courts of Appeal. This decision leaves the law in a state of uncertainty and the determination of these questions by this Court will settle the law on said points and remove the uncertainty and make for uniformity as to rights of defendants in criminal cases in the United States Courts.

Wherefore, your petitioners pray that a Writ of Certiorari may issue out of and under the seal of this Court directed to the Circuit Court of Appeals for the Sixth Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in this case, entitled in that Court Mitchell Clifton Anderson et al., appellant, *v.* United States of America, Appellee, to the end that said cause be reviewed and determined by this Court as provided by law, and that your petitioners may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and that the said judgment of the Circuit Court of Appeals and the judgment of the District Court of the Eastern District of

Tennessee be reversed by this Honorable Court and the petitioners awarded a new trial.

MITCHELL CLIFTON ANDERSON,
JOHN EDWARD SIMONDS,
EARL HUBBARD,
FELTON MOORE WOODWARD,
MARION LUTHER ELLIS,
ROBERT LEE BALLEW,
JOHN DAVID QUEEN,
ROBERT LEE RHODES,
By E. B. BAKER,
Attorney.

W. H. NORVELL,
Counsel for Petitioners.

Of Counsel:
E. B. BAKER,
ROBERT C. HUNT,
J. A. LIPSCOMB,
J. M. C. TOWNSEND.

STATE OF TENNESSEE,
County of Hamilton:

E. B. Baker being duly sworn says that he is one of the Attorneys and counsel for all of the petitioners above named and as such had personal charge for them of the case in the foregoing petition mentioned in the District Court of the United States for the Eastern District of Tennessee and in the United States Circuit Court of Appeals for the Sixth Circuit; that he has read the foregoing petition and that the facts therein stated are true to the best of his information and belief.

E. B. BAKER.

Sworn to and Subscribed, before me, this the 6th day of January 1942.

BERTHA B. BEARD,
Notary Public.

Commission expires 4-25-1944.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Opinion Below.

The opinion of the Circuit Court of Appeals will be found in the record at pages 868 and 884. The judgment in the District Court sentencing petitioners to the penitentiary and imposing fines was entered on February 3, 1941 (R. 31-40).

II.

Jurisdiction.

Jurisdiction was acquired as set out in the petition for certiorari (P. 2).

III.

Questions Involved.

The questions of law involved are fully set out in the petition for certiorari at pp. 2-3.

IV.

Statement of the Case.

While there is a fair statement of the case contained in the petition for certiorari we believe it is proper to go into this phase more fully.

On July 14, 1939, the International Union of Mine, Mill and Smelter Workers called a strike against the Tennessee Copper Company, a copper smelting concern located in Polk County, Tennessee, in the Eastern District of Tennessee. The strike continued from that date until after the offenses charged in the indictment in the present case were alleged to have been committed. On August 23, 1939, the Tennessee Copper Company decided to re-open the plant which had been shut down since the beginning of the strike. The Sheriff of Polk County, B. E. Biggs, was on friendly terms with the Copper Company and at their instance employed a large number of men, as he says, to protect their property and keep order and gave them commissions as deputy sheriffs (R. 551). Some of these men were from Polk County and some from other places (R. 163). The Copper Company owned a building in Copperhill, Tennessee, which had formerly been used as a Y. M.

C. A. On August 23, 1939, when the Copper Company decided to re-open the plant and send out notices to the employees this building was turned over to Sheriff Biggs of Polk County, by an official of the Copper Company as a place for these special deputy sheriffs to live. As Sheriff he did not pay any rent on the building and immediately quartered, in army style, quite a number of deputy sheriffs in said building (R. 550-1-2-733). Immediately after the company re-opened, various acts of violence were committed by both sides. As is usual in a labor controversy there is a great deal of violence and where special deputy sheriffs or guards are placed on duty in large numbers the strikers as a matter of course would entertain a very bitter feeling towards the deputies. These acts of violence and trouble in the strike continued until the night of the 31st of March, 1940, when two power lines belonging to the Tennessee Valley Authority, a corporation in which the United States of America is a stockholder, were dynamited and the power partially shut off (R. 125).

Here it might be well to describe the situation of the power lines. There are two power lines running into Copperhill, Tennessee, one known as the Blue Ridge or Parksville line, which runs from Parksville, Tennessee, in Polk County, into Copperhill. The other line originates at Blue Ridge, Fannin County, Georgia. In the event only one line was blown the power would not be shut off in Copperhill, but if both lines went out at the same time all of the power was shut off (R. 129). In each instance when the dynamitings occurred one occurred in Fannin County, Georgia, on the Blue Ridge Line, and one in Polk County, Tennessee, on the Parksville line.

On the night of April 14, 1940, two steel power lines or towers were blown down. On the night of April 23, 1940, the lines were again blown down in the same manner (R. 125).

Prior to the dynamiting on April 23rd the Federal Bureau of Investigation had been notified and on April 16, 1940, had ordered two of their agents, Mann and Roach, into Polk County for the purpose of making an investigation (R. 168-322). The two agents from then on until the night of the 23rd worked in connection with Sheriff Biggs of Polk County and the Sheriff went with them on their investigations. They constantly associated with the Sheriff and discussed with him who he thought might be guilty (R. 332-3). Sometime, shortly after midnight on April 22, 1940, the Sheriff of Polk County went to the Hotel where he met Agent Mann and carried with him one Freed Long and there advised the said Federal Agent that the power lines would be blown down again at 1:20 the next night (R. 466-7-558). The lines were blown at 1:17 on the night of April 23, 1940 (R. 557). Thereupon the Sheriff and Agents Mann and Roach discussed in detail who they thought might be guilty of the offenses (R. 556). The Sheriff advised agents Mann and Roach that there were 80 or 90 men out on strike who had knowledge of how to use explosives and told them that he thought these men were guilty and said that they would lock up all the men whose names had been mentioned (R. 192). The Federal Agents wanted a place to talk to these men, as they say, or to interview them, told him they had to have some appropriate place to talk to them and the Sheriff advised them that he had an appropriate place; the Agents told the Sheriff that they wanted to talk to all the persons that he suspected and thereupon the Sheriff took the 80 or 90 men into custody so that the agents could talk to them (R. 352-3). At that time there were still stationed at the Y. M. C. A. building, owned by the Copper Company, 15 to 20 of these special deputy sheriffs, all of whom slept on cots in the upper floor of the building (R. 171-553). All of the 80 or 90 men taken into custody by the Sheriff so the Federal Agents could talk to them were picked

up without warrants or any legal process of any kind and they were advised at the time they were picked up that someone wanted to talk to them at the Y. M. C. A. for a few minutes (R. 548-9-559-60-1).

Petitioners Felton Moore Woodward, John Edward Simonds and Earl Hubbard were picked up in this manner on the 24th day of April, 1940, and carried to the Y. M. C. A. Shortly after they reached the Y. M. C. A. they were questioned by Agents of the Federal Bureau of Investigation. On the 24th and 25th of April, 1940, six other agents of the Federal Bureau of Investigation arrived to assist in the questioning (R. 302). This questioning continued daily and nightly until these three petitioners on the 28th and 29th of April, 1940, broke down and made statements. They had been questioned time after time during this five day period by the Agents and by the Sheriff. There is in Copperhill what is known as the City jail. At times the petitioners would be taken from the Y. M. C. A. to the City jail to spend the night. On occasions as many as five of them were placed in a cell 7' x 7' which contained only two small steel bunks to sleep on, each of these only large enough for one man to get on, the others having to sleep on the concrete floor (R. 682-734). While they were being questioned at the Y. M. C. A. these 15 to 25 armed deputy sheriffs, or company guards, constantly circulated through the building all bearing arms, laughing and talking (R. 553-4). The Agent in charge of the investigation, H. E. Plaxico, told the Chief Deputy Sheriff of Polk County, Roxie Campbell, that any of the petitioners who would make a statement he would recommend to the United States District Judge that they be placed on probation and said Campbell thereupon went to the City Jail, where five persons were incarcerated in this 7' x 7' cell, and told them what Plaxico had said (R. 272-3).

Through some unknown source the Federal Agents had secured what they called "confidential information" as to who was guilty of these offenses and how they happened and what all the facts and circumstances were and during their various examinations of petitioners constantly reminded them that they had this "confidential information" and knew what the truth was and if one of the petitioners made a contrary statement the Agents told them that they did not want to hear it that way; that that was contrary to their "confidential information". Finally when the petitioners broke and made the confessions involved here, they conformed to what the Agents knew the truth was from their "confidential information". The source of this "confidential information" was never disclosed (R. 354-5; 339-40; 357; 398-9).

It took the petitioner Felton Moore Woodward more than seven hours to give the Agents his confession, even though at all times, according to their testimony, he was trying to tell them how it happened. When he couldn't remember when something happened the Agents referred to the "confidential information" and reminded him of that fact; he appeared to be groggy and at times it took him as much as five minutes to answer a simple question propounded by the Agents, even they at all times during this seven-hour grilling, say he was trying, as aforesaid to tell exactly what had happened (R. 341-2-3; 329).

The petitioner Robert Lee Ballew was kidnapped in the State of North Carolina, there was no legal process outstanding for his arrest and forcibly brought across the State line without process of any kind to the Y. M. C. A. building and there incarcerated and even though the Agents testify that after they had interviewed him they turned him loose and told him he could go home as far as they were concerned, he was not permitted to go and was held until after

formal complaint was sworn out on the night of April 29th (R. 805-814-716-17).

The Federal Agents and Sheriff's force went into the State of North Carolina also and kidnapped Martin Simonds, one of the original defendants, who was acquitted (R. 634). They went into the State of Georgia and kidnapped Benjamin Costen Cross and carried him across the line without legal process and to the Y. M. C. A. building (R. 242-3).

As corroborating the statement of Roxie Campbell that he was told by Plaxico he would recommend probation for the petitioners who would confess, Agent R. T. Mann on April 30th at the committment hearing in Hamilton County recommended at that time to the United States Commissioner that the bonds required of some of the petitioners who had made confessions, be made lower than that of others (R. 217) and on May 3, 1940, said Agent Mann recommended to the United States Commissioner that the bond of petitioner Felton Moore Woodward be reduced from $3,000.00 to $1,000.00 (R. 218).

During the time these petitioners were confined in the Y. M. C. A. they were not permitted to see relatives, friends, counsel or advisers and if anybody got into the Y. M. C. A. besides deputy Sheriffs and Agents it was a mistake on somebody's part because the Sheriff had given orders that no strangers were to be allowed to enter (R. 555).

After the petitioners were brought to the Hamilton County Jail on April 30, 1940, orders were left by one of the Federal Agents with the jailer that they were not to be permitted to see the members of their families or to have visitors or to see counsel (R. 266). As a matter of fact on a regular visiting day on May 6, 1940, Wayne Henry's wife (who was acquitted) went to the Hamilton County Jail and tried to see her husband and was even at that late date denied the privilege of seeing him (R. 645-774), so as the mat-

ter actually stood these petitioners were not permitted to see their families from April 24th, 1940, to May 6th, 1940. On May 1, 1940, when counsel went to the Hamilton County jail and asked for the privilege of seeing petitioners they were turned away and a protest was lodged with the United States District Attorney and he told counsel for petitioners that they had a right to see them but that he could not enter an order (R. 645-773). On May 2, 1940, petitioners were allowed to see counsel one at a time, but no two of them could be seen together and the first time counsel got to see the petitioners altogether was on the 6th day of May, 1940, when the preliminary hearing was set before the United States Commissioner and that was at the court room (R. 646-773).

This statement of facts in reference to these confessions is drawn from the testimony of the Government witnesses and does not take into consideration the testimony of the petitioners. The only exception to the above is the testimony of the United States Commissioner in reference to the bonds and the testimony of Attorneys who tried to see petitioners and the jailor at the Hamilton County jail.

The petitioners on the other hand testified that they were abused, deprived of food (R. 206; 225-6; 249; 253), a place to sleep (R. 203-250), were compelled at times to sleep with the deputy sheriffs in the Y. M. C. A., sometimes occupying the same beds as the deputy sheriffs (R. 202); that they were given nothing to drink at times, at times were given coffee that was doped (R. 206-228); deprived of water to drink, called damn liars (R. 206), damn lying son-of-a-bitch (R. 239) and other vile names; questioned until late at night; told that they would be sent to the penitentiary fifteen to thirty-five years if they did not confess and would get out light if they did (R. 231-237). Earl Hubbard testified that he was deprived of the right to smoke, have a drink of water and could not see very well without his glasses, was

deprived of them, that he was questioned to such an extent that it was necessary to call a doctor and the doctor was called and says he was questioned on one occasion in continual relays from early in the morning until after dark at night (R. 204-5-6). Incidentally most of this statement is corroborated by the Federal Agents who nearly all admit that at sometime during the day they saw him in the room where he said he was and most of them admit that at some time during the day they did question him. When John Edward Simonds asked if he might see counsel he was told that he did not need counsel and had gotten awfully damn smart (R. 230). John David Queen, whose baby had pneumonia, was told if he would go on and make a statement he could go home and see his baby (R. 683).

The Circuit Court of Appeals cites as authority for the proposition that the confessions of these petitioners were free and voluntary, several cases. The first is the case of *Pierce* v. *U. S.*, 160 U. S. 355, 57. The court said in that case, and this is all that was said in the opinion in reference to the confessions, as follows:

> "The admission of certain statements made by the defendants while they were under arrest and handcuffed was also objected to. No exception was taken to the admission of this testimony, and the court properly held that the mere presence of officers is not an influence. Confessions are not rendered inadmissible by the fact that the parties are in custody, provided that such confessions are not extorted by inducements or threats. Hopt *v.* Utah, 110 U. S. 574, 583; Sparf *v.* United States, 156 U. S. 51, 55. The so called confessions show merely that the defendants acted in a somewhat suspicious manner when first arrested, saying, 'If we killed him you prove it,' 'that is for us to know, and you to find out.' And that they refused to tell their names. There was clearly no objection to this testimony."

The next case cited is that of *Hardy* v. *U. S.*, 186 U. S. 224, 229. In that case the Court said:

> "So the question is whether voluntary statements made by a defendant before and after a preliminary examination are inadmissible in evidence because made to the magistrate who in fact conducted the preliminary examination. We know of no rule of evidence which excludes such testimony. Of course, statements which are obtained by coercion or threat or promise will be subject to objection. Bram *v.* United States, 168 U. S. 532. But so far from anything of that kind appearing the defendant was cautioned that he was under no obligations to make a statement: that it would be used against him if he made one, and that there was a proper time for him to make one if he so desired. Without even a suggestion, he insisted on making, prior to the examination, a statement which was reduced to writing and by him signed and sworn to, and after the examination was over and he had been placed in jail, he had an interview with the magistrate and volunteered a further statement. Affirmatively and fully it appears that all that he said in the matter was said voluntarily, without any inducement or influence of any kind being brought to bear upon him. Indeed, it is not claimed by counsel that there was any improper influence, his contention being only that the provisions of the statute with respect to a statement pending an examination were not complied with in respect to these statements."

The next case cited is that of *Bilokumsky* v. *Todd*, 263 U. S. 149, 157. That case involves a deportation proceeding which is civil in nature and not governed by rules of the criminal courts and the statement was made to an immigration officer. The Court said in that case:

> "It is urged that the admission of Bilokumsky's examination renders the hearing unfair because it is inconsistent with fundamental principles of justice embraced within the conception of due process of law.

The argument is that if a judgment of deportation is to rest upon admissions attributable to the person to be deported, the admissions must have been made by him as a free agent and under circumstances which raise no doubt whether they were in fact made. Deportation is a process of such serious moment that on all controverted matters the executive officers should consider the evidence with close scrutiny. But here there was no denial of alienage; and a landing certificate was introduced by the Government which, when connected with the statement in Bilokumsky's examination, tended in some respects to corroborate it. Moreover, the statement that one is an alien is not the confession of a crime. Except in case of Chinese, or other Asiatics, alienage is a condition, not a cause, of deportation. So far as appears, there was nothing in the circumstances under which Bilokumsky was examined which would have rendered his answer inadmissible even in a criminal case. The mere fact that it was given while he was in confinement would not make it so. And since deportation proceedings are in their nature civil, the rule excluding involuntary confessions could have no application."

The Circuit Court of Appeals also cites the case of *Perkoich* v. *U. S.*, 205 U. S. 86, 91. The only reference in that case in any way to a confession is as follows:

"Now it is alleged that there was error in the overruling the motion made by the defendant to strike out all the testimony given by a deputy marshal of conversations between him and the defendant. As these confessions were not induced by duress, intimidation or other improper influences, but were perfectly voluntary there is no reason why they should not have been received."

The case of *People* v. *Doran*, 246 N. Y. 409, 159 N. E. 379, is also cited as authority for the position that the confessions were voluntary. In that case Doran was charged with

murder and had made a confession. He testified that he had been abused before the confession was made and this was all the evidence offered in his behalf. A well known doctor in the community, a newspaper man, four police officers, the assistant District Attorney and his stenographer all testified that the confession was free and voluntary in every respect on behalf of Doran. The court properly submitted the voluntary nature of the confession to the jury and properly instructed the jury if it was not free and voluntary that they should disregard it. These are all the cases cited by the Circuit Court of Appeals. None of them have any bearing whatever on the present case. It is an elementary rule of law that if a confession is absolutely free and voluntary in every respect it is admissible in evidence and that is what the cases cited by the Circuit Court of Appeals hold.

The cases cited by the Circuit Court of Appeals are not in conflict with applicable decisions of this Court and neither are they authority for the propositions of law advanced by the Court of Appeals. The decision of the Sixth Circuit Court of Appeals is directly in conflict with *Chambers* v. *State of Florida*, 309 U. S. 227, and *Bram* v. *U. S.*, 168 U. S. 532; and *Purpura* v. *U. S.*, 262 Fed. 473 (4th Circuit).

II.

The Court of Appeals held (R. 878-879) that if a conspiracy existed at some place and even though there was no connection whatever shown between the person making the confession and the existence as above stated of the conspiracy was shown then that was sufficient to sustain a conviction. There is absolutely no proof of any kind in the record showing the identity of Robert Lee Rhodes, Robert Lee Ballew and John David Queen except that the court held that there was some evidence that a conspiracy existed.

and then further held that the confession was sufficient for a conviction and cited the case of *Ryan* v. *U. S.*, 99 F. (2d) 864 (8th Circuit). The other cases cited by the Circuit Court of Appeals do not go this far. The decision in the *Ryan* case and in the present case is in conflict with the decision in the case of *Warzower* v. *U. S.*, 312 U. S. 342, 61 S. Ct. 603, and *Langer* v. *U. S.*, 76 F. (2d) 827 (8th Circuit), and *Oldstein* v. *U. S.*, 99 F. (2d) 305 (10th Circuit).

III.

The trial court sustained exceptions to the following questions asked the Government's witness, B. E. Biggs, as follows:

> "Now, Sheriff, for some period prior to these explosions and all during the time of these explosions I will ask you if you didn't have a standing order on file that all your deputies were to search all these defendants' cars that were found out at night?
>
> Mr. Frazier: We object to that.
>
> Court: Exception sustaind.
>
> Mr. Baker: That is asked for this purpose, there is a great deal of testimony some of the defendants were transporting powder back and forth through Polk County. I want to show by this witness those were stopped.
>
> Court: Sustain the exception.
>
> Mr. Baker: Except to your Honor's ruling" (R. 560).

The trial court sustained exception to the following question asked the Government's witness, B. E. Biggs, as follows:

> "I will ask you this question, Sheriff, if the Copper Company wasn't as a matter of fact paying those deputies you had there?

Mr. Frazier: I object to that.

Court: Sustain the exception.

Mr. Baker: We want to except to your Honor's ruling" (R. 553).

The court sustained exception to the following question asked the defendant Marion Luther Ellis:

"Q. Since the Government has asked you about it, how many times had you been searched before that time?

Mr. Badgett: I didn't ask about that, we object.

By Court: Objection sustained.

Mr. Baker: We except to the Court's ruling.

"Q. Had you been searched before that time?

Mr. Badgett: We object to that because immaterial.

By Court. I don't see the materiality of it.

Mr. Baker: I would like to have the jury excused and go into that matter.

By Court: The Court does not think it is competent, even to go into the record. Objection is sustained.

Mr. Baker: We except to the Court's ruling."

The trial court sustained exception to the following question asked the Government witness, Pryor Crowe, as follows:

"Q. How many extra deputy sheriffs were put on? (meaning at and during time of strike).

Mr. Badgett: I renew my objection. That has gone far enough, it is wholly immaterial, and I did not go into that on direct examination.

Mr. Baker: It shows the motive and purpose back of this whole prosecution. We will make it competent.

Mr. Badgett: I object to that statement.

Court: I sustain the objection. I cannot see where a deputy sheriff or a guard would have anything to do with dynamiting Government property.

Mr. Baker: We will connect it up later. We except to the Court's ruling" (R. 157-8).

The trial court sustained exception and excluded the following question asked the Government witness, C. L. Campbell, as follows:

"Q. That was the time you were searching everybody's car in the Basin?

Mr. Badgett: We object to that.

The Court: Sustained.

Mr. Baker: Note an exception" (R. 154).

The trial court sustained exception and excluded the following question asked the Government witness, Creed Brock, as follows:

"Q. You were employed there in charge of a detail of deputy sheriffs who were guarding the Copper Company?

A. I was a deputy sheriff up there.

Mr. Frazier: We object to that, that is not material whether he was employed by the Copper Company or not.

By the Court: I don't think so, objection sustained.

Mr. Baker: We note an exception to your Honor's ruling (R. 568).

The trial court sustained exception and excluded the following question asked the Government witness, B. E. Biggs, as follows:

"Q. And the first thing you did was to put on about a hundred and fifty or two hundred special deputies was it not?

A. I put on a number of special deputies.

Q. Can you give me the highest number you had there?

Mr. Frazier: Now if your Honor please, I object to that.

The Court: Sustain the objection. I don't see where that is competent here, except it might reflect on the

creditability of these confessions, but I don't think we should have too much detail.

Mr. Baker: The Court please, we think it shows the entire situation, and think we ought to be allowed to go into it.

The Court: I don't think so. The investigation was regarding conspiracy to destroy Government property" (R. 551).

The foregoing evidence was all competent and material and vital to the issues involved. It was the theory of the defendants that the Copper Company was in league with and was paying B. E. Biggs, Sheriff of Polk County, to break the strike. That in order to break the strike several hundred men had been employed as special deputy sheriffs, and paid by the Copper Company; that these deputy sheriffs or guards patrolled the highways and searched their homes, all without warrant of law. That when the defendants were arrested they were taken by these same Company guards or deputy sheriffs to a building owned and operated by the Copper Company; that they were arrested without warrants or charges, and there abused by such guards, and that Federal Bureau of Investigation men came in and aided the Sheriff and the Copper Company; that they were placed in jail, as were many others, and held as they were so that the strike could be broken, and that after days of this sort of treatment some of them finally in utter desperation signed statements which Federal Bureau of Investigation agents and such deputies had previously prepared, on being advised that they would be released if they would sign such statements; that said statements were not true, and that the defendants or any of them had anything to do with destruction of Government property, but that the Copper Company through the sheriff and the special deputies or guards blew up the lines in order to get Government agents in and break the strike.

The trial court, in the general charge to the jury charged as follows:

> "It is in the proof, evidence of a labor dispute going on at the time of the alleged dynamiting of the towers and men were out on strike. This proof has nothing to do with the case, except in this particular. We are not concerned as to the merits or demerits as to the labor trouble between former employees of the Copper Company, and the Copper Company and these defendants, and that is admitted in proof for two reasons:
>
> First, from the Government's standpoint as showing a motive why the defendants would enter into a conspiracy to dynamite the towers; and,
>
> Second, from the defendants' standpoint of showing a reason for high pressure methods of obtaining confessions and pleas and a reason why others might have dynamited the towers and laid the blame on them" (R. 834-5).

The trial court charged the theory of defendants as follows:

> "The defendants say, however, generally that this isn't true.
>
> They say that they were on a strike at that time and that the Copper Company used drastic and high pressure methods by which to win the strike on its side, whereby they had the Sheriff's office with them in the fight and the Sheriff's office through them had employed a large number of deputies and large number of guards employed by the Copper Company and paid by the Copper Company and that very high pressure and deceitful methods were used by the Company against these defendants and others in an effort to end the strike. They say the Union was active there but it was a peaceful activity of the Union and these defendants as members thereof were there to see about the distribution of food and medicine and picketing and matters of that kind, all being peaceful and legal activities. The defendants say they never determined

the destruction of any property at any time and never entered into any conspiracy to dynamite any of the power lines and that this high pressure, deceitful method was used to obtain confessions and pleas of guilty of some of them and that they finally decided that was the best way out of it, through representations made to them by the Federal Bureau of Investigation Agents and the Sheriff. Each and all say the Government has not presented sufficient proof to show them guilty of a conspiracy.

They say it is just as reasonable to suppose the Company, through some of its agents, had the towers dynamited in order to have the Government send in their agents and lay the blame on the strikers as it was to think they did it'' (R. 837-8).

The court substantially charged the theory of the defendants correctly. However, the theory went to the jury without proof, as hereinabove set out, every effort to prove the theory was met by objection, and such objections sustained by the Court.

It was the duty of the Court to charge every reasonable matter of defense which there was evidence to support.

Bird v. *United States*, 180 U. S. 356.
Colderon v. *United States*, 279 Fed. 556.
Hoback v. *United States*, 284 Fed. 529.
Jenkins v. *United States*, 59 F. 2d 2.
Little v. *United States*, 73 F. 2d 861.

Conclusion.

It is therefore respectfully submitted that this case is one calling for exercise by this Court of its supervisory powers in order that the errors herein pointed out may be corrected; that the law may be properly and authoritatively defined and the judgment of the Circuit Court of Appeals for the Sixth Circuit be reversed to the end that justice be done to petitioners and that to such end a Writ of Cer-

tiorari should be granted and this Court review and reverse said decision.

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